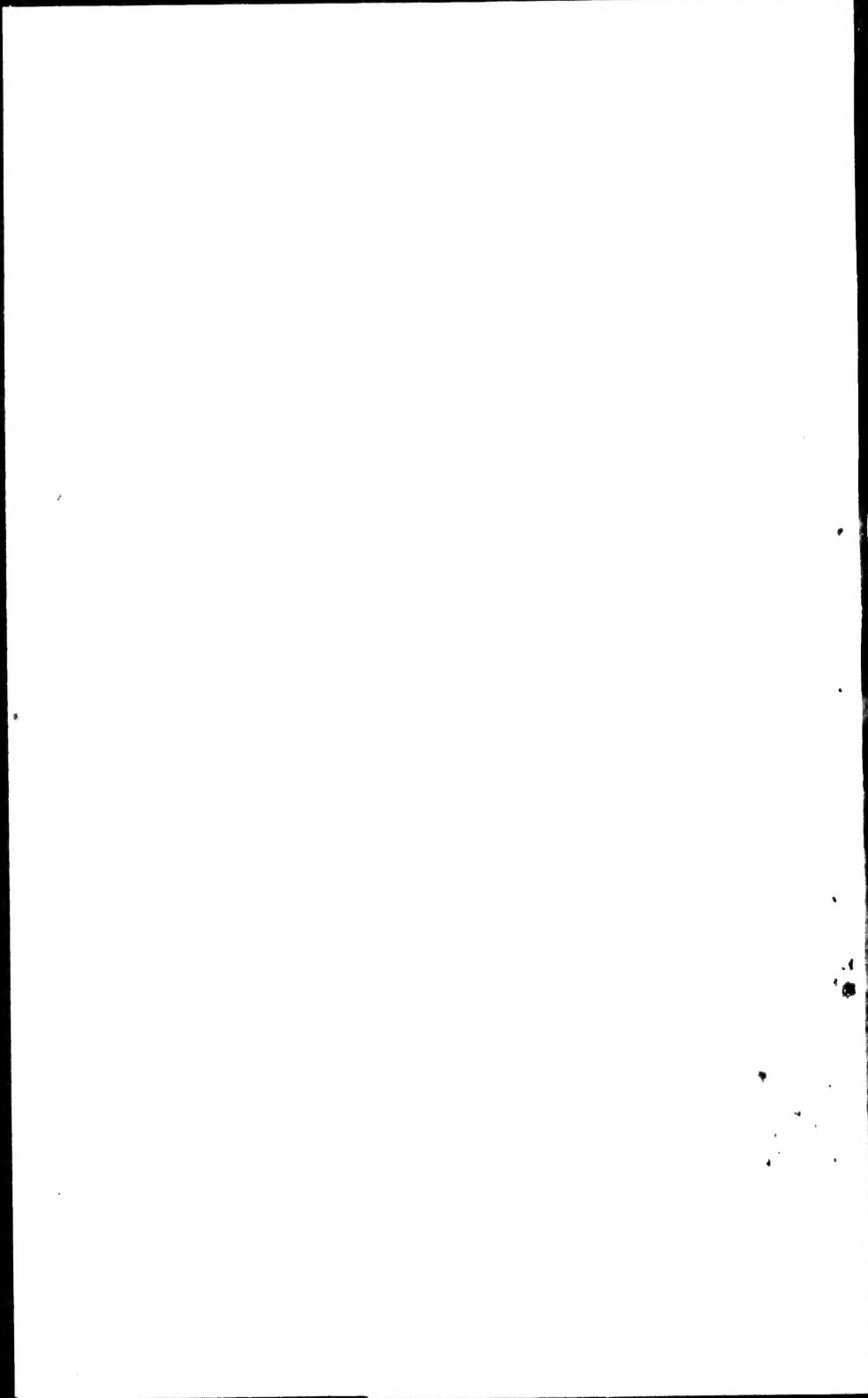




MEMOIR

ON THE PART OF THE

SEMINARY OF MONTREAL.



The Seminary of Montreal is in possession of its property, and this is sufficient to enable it to maintain its rights. But in consequence of the reports which have gained ground that its right of property is not indisputable, it has become its duty to make its titles known. All that has been urged against it amounts to a denial of its legal existence and of its legal right to the property held by it. To the assertions thus hazarded we shall oppose the two following propositions, and establish them by proof. If the subject has but little of what is agreeable in it, it is yet of the highest interest to the Province, which either through its Poor, its Hospitals, its Schools, its Colleges, or its Indian inhabitants, reaps the chief share of the benefit of the said property.

The Seminary of Montreal has a legal existence.

1st. Prop.

In the first place we find that the said Seminary was in existence in the early times of the Province. The enregistrement in the *Conseil Supérieur*, of the Letters Patent of 1677 establishing the Seminary, is recorded in our Archives. The entry of enregistrement states, that "M. Lefevre demands that the Letters Patent establishing an Ecclesiastical Seminary in the Island of Montreal, be homologated."—We find also, the record of the enregistrement in 1717, of the Letters Patent of 1714, "at the instance of the

Possession.

" Ecclesiastics of the Seminary of St. Sulpice, *established* " at *Ville-Marie*, Seigniors and Proprietors."—We have the enregistration at Montreal, in 1718, of the same Letters Patent granted " to the Ecclesiastics of the Seminary of " St. Sulpice, *established* in that City."—We find in the collection of the Laws of Canada, the Seminary of Montreal existing and mentioned in the Edict of 1623(289);—and mentioned also in the *Arrêt* and Letters Patent of 1702, (305 &c.) &c. Now by this existence itself, the Seminary is legalized : —Because in the declaration of 1743, there is in the Article IX., an exception in favor of the Establishments already actually in existence in Canada:—Because the French Laws, before the Edict of 1749, had excepted Seminaries from the necessity of obtaining Letters Patent for their Establishment ; of this kind is the Ordinance of 1659, which the Parliament of Paris would not enregister without this exception was made in it, (*Mem. du Clergé*, 593, &c.): such is the express provision of the Ordinance of 1666. In Canada then, (where the Edict of 1749 is not in force,) Letters Patent were not requisite to the establishment of the Seminary of Montreal, for which, nevertheless, they were granted. The existence of the Seminary then, for thirty years, would be alone a sufficient title [*Dict. de droit Canonique de Durand*, vol. II. page 353]; and it has existed for more than 160 years, reckoning from 1677 to 1840. The Seminary has then a legal existence, by the Art. IX. of 1743 ; because Letters Patent are not necessary for the establishment of a Seminary ; and because it had existed more than 30 years before the year 1743.

Bishops.

This legal existence is proved by the Bishops of Que-

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bec having recognized the Seminary of Montreal, so far as to adjoin several Curacies to it in 1678 and 1694, &c. [*Loix du Canada*, 304]. Now no persons were better acquainted with the Seminaries than the Bishops, who, under the French Government, had full authority to establish and endow them; and this must be more especially true with regard to a Seminary which, in 1678, had only existed for a single year.

This legal existence is proved also, by its having been St. Sulpice, recognized by the Heads of the Order of St. Sulpice, who could not but be aware which of their houses were legally established, and must have possessed this information especially with regard to that at Montreal which they had been directed by the King to establish—[*Loix du Canada*, page 80.] Now the Heads of the Order of St. Sulpice have so expressly recognized the legal existence of the Seminary of Montreal, that in 1696, they bestowed a considerable sum on it to be placed at interest for ever [our Archives]; and in 1764, they ceded to it all their right to any possessions in Canada, when they were permitted to sell them by the Treaty of Peace. Would they have exposed themselves to lose the whole by giving them to a Body not legally constituted? The Heads of the Order of St. Sulpice, have so expressly recognized the legal existence of the Seminary of Montreal, that when the Edict of 1693 was made, they prayed the King to grant to it the property of the *Greffe* [*Idem*, page 289; and in the *Arrêt* and Letters Patent of 1702, they are stated to have prayed the King that several Curacies might be united to the Seminary of Montreal—[304, &c.]

Authorities This legal existence is attested by the Civil Authorities in Canada;—by the Court at Montreal, and the *Conseil Supérieur* in the enregistration above cited, [page 4];—by the enregistration in the said Council (*Conseil*) of the Lettlers Patent for the union of the said Curacies (our Archives), in which enregistration the Council declares the said Curacies to be united and incorporated with the Seminary *established* at Montreal;—by the Grant made in 1717, by the Governor and Intendant, of the Seigniorie *du Lac*, to the Ecclesiastics of the Seminary of St. Sulpice, *established* at Montreal, (*idem*). The Grant was confirmed afterwards to the whole body of the Sulpicians, of which the Seminary of Montreal was a branch; this was necessary for the purpose of preserving the subordination which is observed in Ecclesiastical bodies, but did not prevent the Governor and Intendant from regarding the Seminary of Montreal as a body so far legally constituted as to be capable of possessing Seigniories.—Its legal existence is also proved by the Ordinances concerning Mortmain, made in 1732 and 1743, having been formally notified to the Seminary of Montreal, (our Archives) which was therefrom considered as holding property in Mortmain, as a community.

The King. This legal existence is also proved by a great number of Royal *Actes* in our Archives. These are,—the *Lettres de Terrier* of 1695, in which the King recognizes a Community of St. Sulpice established at Montreal; and that the donation of 1663 had been made for the purpose of establishing a *Communauté* there.—*Lettres de Terrier* granted in 1724, in which the King recognizes a Community of Ecclesiastics established with permission

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at Montreal, by the body of the Sulpicians;—The Commission of the *Greffier* at Montreal, in which the property of the *Greffe* is recognized to be vested in the *Ecclesiastics of the Seminary of St. Sulpice, established in the said Island*.—Edict of 1693, [in the collection of the Laws of Canada, 289, &c.] where it appears that the Ecclesiastics of the *Seminary of St. Sulpice are established on the Island of Montreal*; and being endowed with the profits arising from the Seigniorial administration of Justice, and with the rights of appointing the *Greffier* and the property of the *Greffe*.—The *Arrêt* of the Council of State, dated the 15th May 1702, for the union of certain Curacies to the Seminary of Montreal; in which it is recognized that the Ecclesiastics of St. Sulpice have established the Seminary at Montreal by virtue of Letters Patent issued in 1677, (304); and the King unites the said Curacies to the said Seminary, directing at the same time that they shall be served by such of the Ecclesiastics as shall be appointed for that purpose by the Superior, (306).—The Letters Patent to the same effect, dated June 1702, in which it is again repeated that the Sulpicians have established a Community and Seminary at Montreal, [306]; and the King declares that the said Curacies *shall remain united to, and incorporated with the Seminary of the Ecclesiastics of the Order of St. Sulpice, established at Ville-Marie*. A Community established by the Sulpicians, under Letters Patent, and to which the King unites certain Curacies: how strong a proof is this of the legal existence of the Body?—Letters Patent issued in 1714, in which the expression “*enclos du*

" *Séminaire de Ville-Marie*," are repeated several times [325, 327, 328.] They therefore suppose the existence of a Seminary recognized by the King.—In the order made by the Council of State in 1716, [338] the King directs " that 2,000 *livres* shall be paid by the Seminary of St. Sulpice, established at Montreal, and possessing Building Lots in that City, of which as well as of the whole Island it is Seigneur: and that with regard to the other Communities, &c." The Legislator thus recognizes a Community like *the other Communities*, effectually established, possessing Building Lots, and being Seigneur of the City and of the whole Island; and levies a Duty on that Community. This is certainly to recognize it as a Corporation, and it is the Legislator himself who so recognizes it.—An order precisely similar, made in 1722, [431] furnishes the same proofs.

Establish-
ment.

This legal existence is proved by the Establishment of the Seminary, and we have the instrument by which this was expressly effected—the Letters Patent of 1677. (80). They are intituled, " Establishment of a *Seminary in the Island of Montreal*," and on the back is written " *For the Establishment of a Seminary in New France*." (idem.)—The enregistration of the said Letters in the Council proves the same thing; they are stated to contain these expressions, " *We have permitted and do permit the Establishment of a Seminary of Ecclesiastics in the Island of Montreal*." What then is wanting to its establishment? That the Sulpicians should send out Ecclesiastics? They had already done so (80, 81,) and never ceased to do so, as may be seen in the numerous Instruments above cited.

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The Ecclesiastics of St. Sulpice are then proved to be a Community established by Letters Patent. This is all that is necessary to the legal constitution of a Body. The King permits the Sulpicians to establish a Seminary and Community at Montreal; we then find, by the Letters de Terrier of 1695 and 1724, and by the Arrêt and Letters Patent of 1702, that the Sulpicians did establish a Seminary and Community accordingly. We have therefore a Seminary erected by Letters Patent, and consequently most legally established.

The Seminary of Montreal once established, continued until the Conquest,—from its nature as a body having perpetual succession; Conquests by their nature leave every thing as it was before, unless the conquering party make a change;—the 33rd and 35th Articles of the Capitulation mentions the Seminary of Montreal with the other Communities, and designates it by a corporate name “the Priests of St. Sulpice at Montreal.” The Capitulation also mention their Regulations and Constitutions, and consequently speaks of it as a Community; and if the subjects there mentioned are referred to the King’s Pleasure, the Seminary must remain a body corporate until the King shall have expressed his pleasure to the contrary.—The 34th Article when it secures to all Communities the property then belonging to them, preserves also the Communities themselves who are to enjoy them.

Since the Conquest, as before it, the Seminary has passed thousands of Deeds of concession and other Instruments, in which it has acted as a body corporate: But bodies corporate may, according to Blackstone [11. 205. French

Conquest.

Usage.

edition.] be established by custom alone. And by the ancient French law, thirty years were sufficient, and this Jurisprudence has not been changed in Canada, since the declaration of 1743 does not mention Seminaries, which we have seen are exempted from the necessity of Letters Patent.

Recognition by Government.

The Government, [which alone possesses the right of contesting the legality of bodies corporate, because its authority alone can be infringed by their illegality] recognised so expressly the corporate capacity of the Seminary, that it paid the Rent of the House in which the *Greffe* was kept, by an Order of the Council in 1766, and ordered the Minutes of the *Greffe* to be returned to the Seminary by an order of the Governor in 1766, and caused a *Greffier* to be appointed by it in 1776, by a Letter from the Lieutenant Governor to Mr. Montgolfier the then Superior. Now, no individual in the Seminary had any right to do any of these things; and to recognize the right of doing them, was, therefore, to recognize them as belonging to a body corporate, &c.

Fealty and Homage.

A still more solemn act of the Government is the reception of the Seminary to perform Fealty and Homage. Now it was in its corporate capacity that the Seminary was allowed so to do, for Mr. Brassier performed the same in the name of the Seminary: this shews it to have been a Body Corporate:—he was received as the Procurator of the Seminary without shewing any Instrument appointing him such, another privilege belonging exclusively to bodies corporate:—he was received as acting for the Ecclesiastics of the Seminary, without any mention of their names; this

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is another similar privilege:—he was received after having mentioned the Letters Patent by which the Seminary had been established, for the purpose of shewing that it acted as a Body Corporate.—Therefore, &c.

The King's Instructions are cited because they were made public by order of the Parliament of the United Kingdom in 1817, &c. These Instructions under the Sign Manual, authorize the Societies of Priests called Seminaries of Quebec and Montreal, to fill vacancies and to admit new Members, according to the Rules of their respective foundations. They go on to subject these Seminaries and all other Communities to the Royal Inspection (p. 479).—The expression "Priests of the Seminary of Montreal," designates a Body Corporate, "to fill vacancies," is to be understood of vacancies in a body corporate, and not in a voluntary Society: "to admit new Members" belongs to bodies corporate alone: Mercantile Associations do not require the King's permission to admit new Members: to refer to the "Rules of their foundations," is to refer to the establishment of the Seminary, which we have seen was perfectly legal. The words "Seminaries and other Communities," suppose that the Seminaries are Communities.

We may even add that since the Conquest, the Seminary has become a legal constituted corporate body, by virtue of a new title. It is so, not only by virtue of the Letters Patent which establish it, but also because as the Letters Patent of 1677, which perpetuated the Donation of the Sulpicians, could only be carried into effect in favor of the Sulpicians of Montreal, (the Sulpicians in France being

disqualified) it follows that these Letters Patent qualify the Sulpicians of Montreal, and make them a corporate body, if they were not so before. Thus, therefore, the Letters Patent of 1677, must, in order to have ensured the endowment, have rendered the Sulpicians of Montreal a legal corporation. If the King of France had divided the corporation of the Sulpicians and the property, this legal division would have created two corporate bodies. Now the Law of necessity, which is the first of Laws; the Law of Conquest, which is the Law of Nations; the Law of Treaties which is the Conventional Law of two Sovereigns, and of two Nations, have divided the Corporation of the Sulpicians. By virtue of the premises then the Sulpicians of Montreal are still a legal corporate body. By the Conquest the Sulpicians of France became as nothing to the Government here, and therefore as far as the present Government is concerned, the Sulpicians of Montreal form the whole corporation of the Sulpicians. They do so too, because all the Sulpicians of France may be considered as deceased as far as Canada is concerned, and consequently the Sulpicians of Montreal are, with respect to Canada, the whole corporation of the Sulpicians; and therefore, they are still a legal Corporation.

Our adversaries are forced to admit this by the principles they lay down. They argue that the Cession made to the Seminary of Montreal is null because it was made to a corporate body. But if the Seminary is not legally a corporate body, it is not a corporate body at all. In that case the Cession having been made to individuals there is nothing to prevent its being valid.—They insist that the property

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aforesaid should revert to the Crown ; but if it was granted to individuals it has become private property, and the Crown is excluded from it. His Majesty's pretensions can be well founded only in case the property is now held by a Corporation. It follows then from the principles laid down by our adversaries, that the Seminary is a real and legal Corporation.

But is this legal Corporation capable of holding property ? ^{Seminary capable of holding property.}
 —Who could doubt it ? We have seen in the *Lettres de Terrier* of 1695, (p. 4.) that the donation to the Sulpicians in 1663, was made for the purpose of establishing a Community at Montreal ; and the Letters Patent of 1677, (p.80) make this a donation in mortmain for the purpose of facilitating the Community and Seminary at Montreal. It was necessary that this donation should avail to the said Community, and therefore, that it should be capable of holding property. It must have been capable of holding property, because by the Deed of 1696, the whole body of the Sulpicians made a donation of a considerable sum to be placed at interest, (p. 5.); and the same body in 1764 made over to it all the property held by the Sulpicians in Canada, (in so far as need shall be, are the words of the Act) which property might have been sold by it. The Community in question must have been recognized as capable of holding property, because the Bishops of Canada by the Deed of 1696, gave property to it jointly with the Corporation of the Sulpicians ;—and because (p. 5.) the said Bishops as early as 1678, united several Curacies to it. The Community in question must have been recognized as capable of holding property, because (p. 4.) the *Conseil Supérieur*

in the enregistrement of the Letters Patent of 1714, calls it Seignior and Proprietor ; because the Court at Montreal in its Acts of enregistrement declares the Letters Patent [which authorize the Sulpicians to hold their property in Canada under certain charges] to be granted to the Ecclesiastics of St. Sulpice established at Montreal. [p. 4.] The Community must have been recognized as capable of holding property, because the *Conseil Supérieur* in enregistering these Letters Patent for uniting the Curacies, declares them to be united to the Seminary of Montreal. [p. 5.] The Community must have been recognized as capable of holding property, because the Governor and Intendant granted them the Seigniory *du Lac*. The Community must have been recognized as capable of holding property, because in the Edict of 1693, and the instrument appointing a *Greffier* in the same year, the King of France recognizes the right of jurisdiction, and afterwards the property of the *Greffe*. The Community must have been recognized as capable of holding property, because in 1702 the King unites and incorporates several Curacies with the said Seminary, and gives the right of appointing the Incumbents to the said Seminary.—The said Community must have been recognized as capable of holding property, because the Letters Patent of 1714 recognize the Seminary of Montreal as possessing a certain tract of enclosed ground.—The Community must have been recognized as capable of holding property, because the Arrêts of the King, in 1716 and 1722, recognize the Seminary of Montreal as possessing several Lots of ground, and as Seignior of the City and of the whole Island, and tax it accordingly for 40 years.—The Community

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must have been recognized as capable of holding property, for during 40 years, that is to say, until 1756, at least, the King made an annual allowance to it as appears by several receipts of the King's Commissioners. [*Our Archives*].—The said Community must have been recognized as capable of holding property, because after the Conquest the Government caused the Rent of the House in which the *Greffe* was held, to be paid to it for more than thirty years, and then returned the House to it, and returned also the minutes of the *Greffe* to it, and caused it to exercise the right of appointing a *Greffier*.—The Community must have been capable of holding property, when His Majesty received the Seminary to perform fealty and homage, declared it proprietor of certain Seigniories, and vested in it the property and possession of the same.

A Corporation is in fact nothing more than a fictitious personage recognized by the Law, and possessing the privileges enjoyed by persons and individuals in all cases where not expressly prohibited. (Domat. 11, page 104). It is common to all Communities to have their rights, power of transacting business, and privileges. (105.) Property may be bequeathed to any Community whatever. (1. 471.) A Community cannot even be established unless property is assigned to it for its support. (Héricourt, H. 3. Art. 2 and 3).—Therefore, as soon as a Corporation is established, it becomes capable of holding property by complying with the requisite conditions of the Law.

Another difficulty is opposed, founded on the alledged impossibility of the existence of the Seminary, separated from the Corporation of the Sulpicians at Paris.

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real exists
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We answer :—First, That the legal existence of the Seminary is proved. It is urged in reply that it no longer has such existence, since its separation from the Corporation of the Sulpicians at Paris. It is for those who alledge this to prove it :—and as they do not prove it, we must conclude the Seminary of Montreal exists, although separated from the Corporation of the Sulpicians at Paris.—Secondly, It is a fact undisputed throughout Europe &c., that not only has each of the Orders of the Francis-cans, the Dominicans &c. a legal existence, but that each particular establishment of the said Orders, is a legal Corporation as much as the entire Order. These Establishments have then two kinds of legal existence, the one as part of the Order, and the other as a separate Corporation, having its proper buildings &c. In this manner the Seminary of Montreal, in as far as it was a portion of the Order of St. Sulpice, existed before the Conquest, only as such portion of that Order ; but as a particular Seminary established at Montreal, it had a proper and peculiar existence, which made it a legally constituted corporation apart from the entire Order aforesaid. Thirdly, Before the issuing of the Letters Patent of 1677, the Ecclesiastics of the Order of St. Sulpice who came to perform duty at Montreal, existed only as a portion of the Order of St. Sulpice, because no other legal Corporation had been formed of them. But when the Letters Patent of 1677 has constituted these Ecclesiastics to be a Community and Seminary at Montreal, they certainly effected something : they established a Corporation and Community at Montreal, which did not previously exist there, and they created a new legal Corpora-

tion, that is, the Seminary of Montreal. This Corporation then, has a legal existence independent of that which it has jointly with the rest of the Corporation of the Sulpicians.— Fourthly, If it were other wise, a Sovereign might forbid any union between the Communities within, and such portions of the same Communities as might be without, the limits of His Kingdom, and by this separation the Establishments of the several Religious Orders within His Kingdom, would cease to exist, and would be annihilated. But the Communities in other States, being thus separated from the body of their several Orders within such Kingdom, would also cease to have any legal existence, and would be annihilated; and thus, by a single word, a Sovereign might annihilate all the Religious Orders in the Universe. Who does not perceive the absurdity of all this? There is but one way in which this mischief can be avoided; and that is, by allowing that if any Prince forbids the Communities within his Dominions to have any union with those in other States, the said Communities will still subsist, but will be separated from such portions of their body as may be in Foreign States; any thing that happens in the latter, having no power to affect any institutions elsewhere. The separation then of the Seminary of Montreal from the Corporation of the Sulpicians at Paris, could not affect the legal establishment of the said Seminary, which would only be thereby deprived of its correspondence with the main body of the Order. Fifthly, These principles become still more evidently true, when we consider the nature of the French Government, under which no Community could be established by any Order without the express or implied

permission of the Sovereign. Such Communities must therefore always have had a separate existence distinct from that of the main body of their Order. Sixthly, If the Seminary of Montreal had never enjoyed any legal existence except as a portion of the Community of the Sulpicians of Paris, it is clear that it could only have existed through the latter. But the said Seminary has a legal existence independant of this. For though it is true that we find the Ecclesiastics of the Seminary of Montreal, called Ecclesiastics of St. Sulpice of Paris, because that is the proper name of the whole Order of the Sulpicians, yet those of the Seminary at Paris were never called Ecclesiastics of the Seminary of Montreal. The Superior Officers of the Seminary of Montreal are not the Superior Officers of the Seminary at Paris. The two bodies were then distinct, and had a separate existence, though both existed by competent authority; so distinct was their existence, that the Seminary of Paris created that of Montreal (80); that the Seminary at Paris owes its existence to Mr. Ollier, and that of Montreal did not exist until ten years after the death of Mr. Ollier; that the Seminary at Paris exists by virtue of Letters Patent issued in 1645, and the Seminary of Montreal by Letters Patent issued in 1677, (80, 81). These two Corporations, then, being perfectly distinct, it is impossible to say that the one cannot exist without being united to the other. Seventhly, This separate existence is proved;—because we have seen that the two Seminaries have entered into contracts with each other;—because it was the Bishop of Quebec who united the Curacies to the Seminary of Montreal, and the concurrence of the Archbishop of Paris would have been necessary if

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the Seminary of Montreal had not been capable of existing separately from that of Paris ; and because we have shewn that the Seminary of Montreal possesses the power of holding property of itself, and unconditionally. Eighthly, If the Seminary at Montreal had no legal existence, except by virtue of its union with the Seminary at Paris, it became by this union with a legally constituted body, a legally constituted body also, and there would then have been no need for Letters Patent to create it such, and those of 1677 were without effect. Ninthly, But these Letters Patent themselves furnish an answer to every objection. The question is, whether the Seminary at Montreal has any legal existence. It is clear that this question can only be answered by referring to the King's Act which gives this existence. Now the Letters Patent of 1677 are this Act. And what is their tenor ? That the Seminary shall cease to exist, if by any event it shall be separated from the Corporation of St. Sulpice at Paris ? There is not a word to this effect. The answer may be given in the trite maxim : "*Ubi Lex non distinguit nec nos distinguere debemus.*" The Letters Patent give existence to the Seminary at Montreal, purely and simply ; they have, therefore, their effect whether it be united to or separated from the main body of the Sulpicians. Yet further, every Community being perpetual, the King in establishing it, does it without any regard to any future events. In the event, therefore, of a separation in the body of the Sulpicians, the Seminary of Montreal would nevertheless continue to exist.

Not only is the legal existence of the Seminary of Montreal independent of its union with the body of the

Sulpicians ; but by its separation from that body it obtains a new legal existence, as we have said and proved.—[p.11.]

How then does it happen that the Order of St. Sulpice could create a legally constituted body at Montreal ?—The answer is simple, and is this: The King gave it power to do so by the Letters Patent of 1677.—Being thus created it was recognized by the King as a Community, as we have proved :—after it was thus created, the King also bestowed on it the *Greffe*, united Curacies to it, &c.—In the event then of any separation in the main body of the Sulpicians, the Seminary of Montreal would continue to exist.

Recapitulation.

The Seminary then is a legally constituted body, because having existed before the declaration of 1643, it became legalized from that time forward by the IX. Article—because being a Seminary, it is exempted from the necessity of obtaining Letters Patent by the Ordinances of 1666 and 1659, and therefore its very existence, especially for so long a period, renders it legal ;—because the Bishop of Quebec and the Body of the Sulpicians who were well acquainted with the nature of their Seminaries, have always recognized that of Montreal as legally established ;—because the Governor and Intendant considered it capable of taking grants of Seigniories ;—because the *Conseil Supérieur* enregistered the Letters Patent by which it was established, recognized it as Seigneur and Proprietor, caused the Ordinances which concerned Communities only to be notified to it, and enregistered the Patents of the union of several Curacies to the said Seminary ;—because the King recognized this Community as established with his permission, as capable of possessing a *Greffe*,—of holding real

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property,—of having several Curacies united to it,—of being Seigneur of Montreal,—of being subjected for a long time to certain charges, and of receiving annually an allowance from His Majesty ;—because the King expressly established it by His Letters Patent.

When we find so many proofs united, where one only would suffice, it is scarcely possible to conceive that any one could have the hardihood to assert at hazard, that the Seminary has never been legally established.—It would be easy in the same way to contest the legitimacy of the most honorable and ancient families in the country, who, certainly, could not produce so many and such decisive titles of their existence.

The Seminary of Montreal is the proprietor of the property of the Sulpicians in Canada :—We prove this—1stly. ^{2nd. Proposition.} By the donation of this property made in 1663. [Loix du Canada, 81, &c.]

It will be perceived that this donation forming the first ^{Donation.} title of St. Sulpice is the first to be consulted. Now its tenor is :—That the Association for the conversion of the Indians in the Island of Montreal, with a view to second the pious designs of the Seminary of St. Sulpice, [the members of which have zealously and carefully laboured in aid of the work of converting the Indians and instructing the French Inhabitants of the Island of Montreal] have given, &c. The Superior of the said Seminary being present to the Deed, &c. (80, 81.) on condition, firstly, *that the Domain and Property of the said Seminary shall be inseparably united to the said Seminary, without any possibility of their being separated for any cause or reason whatsoever.*

The Letters Patent of 1667, which authorize the holding in mortmain of the property so given, permit the Sulpicians to establish a Seminary in the Island of Montreal for the better promotion of the conversion and instruction of His Majesty's subjects; and with a view to facilitate the establishment thereof, they contain the King's approval of the said donation, and authorize the holding of the said Seigniory in mortmain for ever, *as dedicated and consecrated to God*; directing that it be for ever united to the said Society of the Seminary of St. Sulpice. [p. 80.]

According to this statement, which was agreed to by the Officers of the Crown in 1789, the Donation was, according to its tenor and to that of the Letters Patent made in furtherance of a spiritual work,—the conversion of the Indians and the instruction of the Canadians, to be performed in the Island of Montreal.—But a donation made in consideration of a work to be performed in the Island of Montreal, must by virtue of the condition itself be made in favor of those who are to perform that work upon the spot. It was, therefore, made in favor of the Seminary of Montreal, which for more than 160 years has not ceased to be engaged in performing it.

This reasoning is supported by the Jurisprudence of the Colonies, as is well explained by Petit, a Magistrate at St. Domingo.—This Author [Vol. 2. p. 511, 512, 513,] lays it down and proves it by reasoning and by the orders made by the King of France, that the property of the several Religious Orders in the Colonies must in case of any separation from the main body of such Orders, be dedicated to the work to be performed, and belong to the Missionaries

by whom it is performed. Because the intention of those who gave such property cannot have been to favor Communities situate at a distance of two thousand leagues, and such property could only have been destined for the support and maintenance of the Missions and Missionaries.—The Donation, therefore, made to St. Sulpice, in favor of a work to be performed in the Island of Montreal, must necessarily have been made in favor of the said work, and for the benefit of those by whom it was to be performed upon the spot, that is to say, of the Seminary of Montreal.

From what has been said, it will appear that the Donation was not only made in favor of the work aforesaid, but that it also expressly mentions by whom it is to be performed, and the persons are the Ecclesiastics of St. Sulpice.—Now the Seminary of Montreal alone performs the said work on the spot, and is at the same time a Society of Ecclesiastics of St. Sulpice.

It also appears that the Donation is made to the Ecclesiastics of St. Sulpice for ever, without any power of alienation for any cause whatever. But after the Conquest, the Donation could no longer subsist for the benefit of the Ecclesiastics of St. Sulpice in France, who had become Aliens,—it could only subsist then, in favor of the Ecclesiastics of St. Sulpice for ever, except in so far as they should be the Ecclesiastics of St. Sulpice at Montreal.—The Donation can never avail to any but the Ecclesiastics of St. Sulpice. Now after the Conquest, the only manner in which the said Donation could avail to the Ecclesiastics of St. Sulpice, is by its availing in favor of the Seminary of Montreal.—After the Conquest the said Donation ought

evidently to be considered as having been made to the Seminary of Montreal.

What, in fact, are the essential conditions of the Donation?—It is, that the work should be performed on the spot; that it should be so performed by Ecclesiastics of St. Sulpice, and that it should be performed for ever, and consequently by a Community of Ecclesiastics of St. Sulpice. Now all these conditions are complied with by the Seminary of Montreal; all the essential conditions of the Donation are then complied with by the said Seminary, and therefore the Donation ought to avail to the said Seminary according to its tenor.—What then is wanting to the perfect accomplishment of all the conditions of the Donation?—One thing only and that purely accidental, and which having become impossible cannot be supposed to have been insisted on by the Donors;—it is, that the Donation should avail to all the Ecclesiastics of St. Sulpice, and not to some of them only, that is to say, those at Montreal, who are all the Sulpicians capable of benefiting by the Donation, and therefore all who can be supposed to have been intended by the Donors.

Since then it is the intention of the Donors which must be followed—let us see in what manner it could be best complied with. It is clear that this intention is sufficiently obeyed when the work is performed, and that for ever, and by Ecclesiastics of St. Sulpice, in one word by the Seminary of Montreal, because these are the conditions laid down by the Donors. But if instead of the Seminary, the Crown should come into possession, the intention of the Donors instead of being accomplished would be totally frustrated. It was never the intention of the Donors that the

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Sovereign should perform the work in question, nor more especially a Sovereign who is not a Catholic, and who would not bind himself to employ the property for the purpose of forwarding such work. In this case there would be no Ecclesiastics of St. Sulpice, much less a Corporation of Ecclesiastics, who would continue the work for ever. It is then evident, that the intention of the Donors was, that the Seminary of Montreal should be the Donee of the said property.

The Rules of Law are in accordance with these considerations. If any thing be bequeathed to several, it becomes the property of one only, if the others refuse to accept it. [Ferrière, Grand Coutum., Vol. 2, p. 229, n. 2, 3.] It will be seen that the consequence is the same if the others were incapacitated by any other means, by any crime, &c. more especially when the thing is to be enjoyed jointly. The Donation then, made to the Ecclesiastics of St. Sulpice would avail altogether to those at Montreal, the rest of the Order having been incapacitated by the Conquest.

We prove this, secondly, by the Letters Patent of 1677 (80). They confirm the Donation. Now, we have demonstrated that the Donation avails after the Conquest, to the Seminary of Montreal. The Letters Patent therefore confirm the right of the Seminary of Montreal.

The Letters Patent declare the property to be *dedicated* and *consecrated to God*. They are not to be subject to alienation, but to remain in the hands of the Ecclesiastical Communities in which they have been placed. Now how can this double object be accomplished, except through the

Letters
Patent.

the Ecclesiastics of St. Sulpice at Montreal? But the King's of France in particular, by these remarkably strong expressions, exclude themselves from the possession of the said property for ever. The Crown then, which succeeds to the rights of the Kings of France, is excluded for ever, and there remains only the Seminary of Montreal capable of possessing property.

The Letters Patent direct that the property to be held in mortmain shall be so held for ever by the Society of St. Sulpice, and consequently by those Members of the said Society, who at a then future day (that is, after the Conquest) might be alone capable of holding them, that is to say, by those resident at Montreal.

And as the Letters Patent of 1714 merely confirmed those of 1677, under certain conditions and charges, they confirm also the effect of the latter in favor of the Seminary of Montreal.

Specially
to the Se-
minary of
Montreal.

We prove the same thing, thirdly, because the Donation was specially made for the purpose of endowing the Seminary of Montreal.

In fact, according to the *Lettres de Terrier* of 1695, the Donation was made for the purpose of establishing a Community of Priests at Montreal. This is admitted by the Crown Officers in their Memoir of 1789, against the Seminary. Now a Donation made for the purpose of establishing a Community, must be made for the purpose of endowing it. The Donation was, therefore, the endowment of the Community of St. Sulpice at Montreal.

The Letters Patent of 1677, while they establish the Seminary at Montreal, declare that the property given by the

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Donation, is to be holden in mortmain for the purpose of facilitating its establishment. The property so holden was therefore to be employed in establishing the said Seminary, and consequently constitutes its endowment. This is so true, that no Community was ever established without having property assigned to it as its endowment (p. 15). The Letters Patent then, declaring that the said property shall be held in mortmain for the purpose of facilitating the establishment of the Seminary of Montreal, and assigning no other property as its endowment, it follows, that this property itself must constitute its endowment. And this is the more evident, because the Donors having the accomplishment of the work alone in view, did not endow, or wish to endow a Seminary at Montreal, except in order that this Seminary should perform the said work, and continue to do so for ever. The Donation then was made specially to the Seminary of Montreal. And if the Donors have mentioned the whole body of the Sulpicians, it was because they alone could send out Priests to the Seminary at Montreal, and through them perpetuate and enjoy the same.

And in the Edict of 1693 [p. 289] the whole body of the Sulpicians declare, that the emoluments arising from the Seigniorial Jurisdiction, formed in a great measure the endowment of the Seminary of Montreal; for at a time when the whole Island was a mere forest, this Jurisdiction formed the greater portion of the Revenue of the Seignior. According then to the avowal thus made by the whole body of the Sulpicians, to whom the Donation was immediately made, the Seignior constituted the endowment of the Seminary of Montreal, for the support of which alone it is de-

clared to have been received. The Donation then was made especially in favor of the Seminary of Montreal. The King, in the Edict, confirms this appropriation of the said Seignior to the Seminary of Montreal, because in exchange for the Right of Jurisdiction, he gives to the said Seminary the property of the *Greffe*.

In a great number of legal Instruments, the Seminary of Montreal takes the title of Seignior. (Our Archives.)

The Court at Montreal, in the enregistrement of the Letters Patent of 1714, declares that they were granted to the Seminary of St. Sulpice. The Letters Patent which authorize on certain conditions the holding in mortmain of the property given by the Donation, are also in favor of the Seminary of Montreal: the said property is therefore, to be held in mortmain for it.

The *Conseil Supérieur* in homologating the said Letters Patent in 1717, styled the Seminary of St. Sulpice established at Montreal, "Seignior and Proprietor."

Two Judgments also, rendered at Montreal, the one on the 25th of September 1743, and the other on the 6th of March 1744, call the Seminary of Montreal, Seignior of the Island. And on the 26th March 1734, and 26th November 1734, the Intendants recognized the said Seminary as proprietor of the *Greffe*, which was only given to it in exchange for the Seigniorial Jurisdiction, as we have seen. This is certainly recognizing the Seminary to be the Seignior.

We have also seen (p. 8.) that two Arrêts of the King's Council of State, rendered in 1716 and 1722, expressly recognize the Seminary of St. Sulpice established at Montreal,

to be Seigneur of the Town and of the whole Island, and levy upon it accordingly certain charges which were paid during forty years. This is equivalent to its being recognized as Seigneur by the Kings of France, during a period of forty years.

If the Corporation of the Sulpicians takes the title of Seigneur, it does so for the advantage of the Seminary of Montreal, and as the Superior of that Seminary. But the property itself belongs to the said Seminary, because it was to perform the work, and the property was its endowment.

Thus it was for the Seminary of Montreal and for its benefit, that the Corporation of the Sulpicians acted. That Corporation prayed for Letters Patent in 1677; but it was for the purpose of establishing the Seminary of Montreal, and of obtaining for it the power of holding in mortmain the property bestowed on it by the Donation. By the Edict of 1693, an indemnity is given to the Seminary for the Emoluments arising from its Seigniorial Jurisdiction; but that indemnity is the property of the *Greffe*, which is vested in the Seminary of Montreal. The body of the Sulpicians demanded the union of several Curacies; but it was for the purpose of incorporating them with the Seminary of Montreal, and the right of appointing the Curés was given to its Superior. In the cession made in 1764, they take the title of proprietor for the sole purpose of giving every thing to the Seminary of Montreal; but they give it only *in so far as need may be*, and declare that the whole ought to belong to the Seminary of Montreal, and be appropriated to the purposes for which it was founded. Every thing thus demonstrates that the Corporation of the Sulpicians was pro-

prietor only in its quality of Superior over each of its several establishments; (thus it was the Superiors of St. Sulpice who acted when the Seminary itself did not;) but that the property itself, and the immediate right to it was vested in the Seminary of Montreal, to be employed in the furtherance of the objects for which it was founded. The Seminary is the only particular establishment of the Sulpicians which has been styled Seigneur of Montreal, and the Superiors of the Order take that title only because they are the Superiors of the Seminary of Montreal.

Co-proprietor.

But if the Seminary of Montreal had no other title than that of co-proprietor, with the rest of the body of the Sulpicians, its right after the Conquest would not be the less incontestible.

We prove this, fourthly, by the nature of co-proprietorship.

In fact, if that portion of the Sulpicians in Canada lose their right to the property in Canada, of which they were co-proprietors, it must be because the other portion remaining in France, are become Aliens. But in that case the portion of the Sulpicians in France would also have lost their right to the property of the Order in France, of which they were co-proprietors, because the other portion of their body remaining in Canada, had had also become Aliens, as far as France was concerned. Yet no attempt has ever been made in France to forfeit the property held in France by the Sulpicians there. There is therefore no reason to take away from the Sulpicians in Canada the property of the Sulpicians there. For if the contrary were admitted, the property which belonged to the Order of the *Récollets*,

or of the Jesuits, in Canada, would be lost to the Members of those Orders in Canada, and that which belonged to them in France, in Spain, &c. would be also lost to the Members of the said Orders remaining in France, in Spain, &c. So that the conquest of a few Colonies or a few Provinces, would strip all the Religious Orders in the world of their property, and would annihilate them. These are the strange paradoxes to which the idea that the Seminary ought to be despoiled of its property, would lead.

What has been the conduct of England in India, in Corsica, in Malta, &c.? She has maintained to the several Religious Communities their property and establishments in these countries, without enquiring whether the latter belonged to the body of the Order remaining elsewhere. The rest of the Order being Aliens, have been supposed to have no longer any right to the property, if they ever had any; and that those of the Order who remained on the spot were the only persons who ought to enjoy the property as representing their absent Brethren: the sole interest of the Government being the exclusion of Foreigners subject to other Powers. This is what was done by the King of Prussia after the Conquest of Silesia, except in instances where he wished absolutely to suppress Communities by virtue of the right of Conquest. This is also what has been done by several Catholic Sovereigns, who, contenting themselves with having Superior-Generals in France, have allowed the particular establishments to enjoy their property, without enquiring whether it belonged to the Order in general, the Superiors of which did not reside in France: The reason is, that the essence of these establishments is, that the pro-

erty should be employed in furtherance of the work, and in the support of the Institution by which it is to be performed. The rest belongs to the internal Government of the Order in which the members alone are interested. Thus the Government, without enquiring whether the property of the Sulpicians belongs to the whole body, has but one thing to attend to ; and that is, that the work is performed, that the Seminary of Montreal performs it out of the proceeds of the said property, and that no stranger makes any claim upon the latter.

What has been the effect of the Conquest ? The Sulpicians of France lost their rights by it ; but the Sulpicians of Montreal being subjects of the King, have lost nothing. They are then, co-proprietors as before ; but the Sulpicians of France being now incapacitated from being co-proprietors, the Sulpicians of Montreal remained the sole proprietors. The property belonging to the Sulpicians not being capable of being possessed by some portions of them who have been incapacitated, naturally falls to those who remain capable of holding it ; and the effect of this is to preserve the said property for the purposes for which it is destined.

In truth, if one moiety of a Community becomes incapable of holding any property, the other moiety will possess the whole ; because the change in the number and quality of the members makes no change in the Community itself, which exists as before in the persons of those who still retain the necessary capacity. If Members incapable of holding property were admitted into a Community, that Community will still hold it in the persons of the members who are not incapacitated ; the latter are in the case of the Sulpicians of Montreal.

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Suppose a family to possess in common, property in France and in Canada. Some of them remain in France, others in Canada. It is clear, that after the Conquest each party will possess the property in the Country which they adopt. This is the case of the Sulpicians : those of France possess the property of the Order in France, those in Canada, that which is in Canada, by virtue of their respective qualities as subjects in one Country, and Aliens in the other.

If the King of France had divided the Sulpicians and their property into two portions ; so that those in Canada should have possessed the property in Canada, and those in France the property in France ; nothing could have been more legal. What the King of France did not do, the Conquest did. The Conquest, which is the Law of Nations ; the Treaty of Peace which is the act of two Sovereigns and of two Nations, the general Law with regard to Aliens, which annuls any right on the part of the Sulpicians of France to the property in Canada, and vice versa, the Law of necessity, which is the first of Laws ; the general usage with regard to conquered Countries in similar circumstances (as we have proved, p. 29):—these are surely more than Laws enough to render the separation in question legal.

Fifthly, We prove the right of the Seminary from the fact that it has become as far as Canada is concerned, the whole Corporation of the Sulpicians. In fact, all that happens with regard to the Sulpicians in France is foreign to our Government, they are to it as if they were extinct, or had never existed. The Government knows none but the Sulpicians of Canada, who, as far

The Seminary is the whole Corporation of St. Sulpice &c.

as it is concerned, form the whole body of the Order. The Sulpicians of France not being subjects of the King, they cannot be any portion of the Corporation of the Sulpicians in Canada; they are in the same situation as children incapable of inheriting who are accounted for nothing—*pro nullis habentur*. (Ferrière Grand Cout. Vol. 1. page 362, No. 8). The Sulpicians of Canada constitute then to all intents and purposes the whole body of the Sulpicians. They would be so according to the Rules of the Order, if all the Sulpicians of France were separated from the Order; and the conquest has as effectually separated them as their will could have done. By this separation then, whether voluntary or forced, the Sulpicians of Canada are become the whole Corporation of St. Sulpice in Canada. They would be so if all the Sulpicians of France were dead; and by virtue of the Conquest they are all dead to Canada. Therefore the Sulpicians of Canada are here the whole Corporation of the Sulpicians. Therefore the Donation having been made to the Corporation of the Sulpicians, is, by virtue of the Conquest, made to the Sulpicians of Canada, that is, to the Seminary of Montreal.

Sixthly: We prove the right of the Seminary by the Conquest.

Conquest. It is a principle, that Conquest leave all things in the state in which it finds them, unless the conquering party makes any change.—A Conquest more especially leaves each individual in possession of his property. The Capitulation has done more; it was agreed by it, (Art. 34.) “that all the Communities shall preserve the property and “revenues of the Seigniories and other Estates which they

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“ possessed in the Colony, of what nature soever they might be ; and that the same Estates should be preserved in their rights, privileges, and exemptions.” According to the Laws of Conquests then, and more especially those which relate to property, the Seminary preserved its property &c. by the terms of the Capitulation. But the Seminary enjoyed the Revenues of the property of the Sulpicians, therefore it has the same right now.—But it enjoyed more especially that property which it held in common with the Sulpicians of France, as we have already shewn. (p. 28.) It has then always been co-proprietor of the said property. But the Sulpicians of France are no longer capable of holding the said property,—none but Sulpicians can come into their place, and no Sulpicians but those of Canada, who, therefore having been formerly co-proprietors, are become by virtue of the Capitulation which excludes those of France, sole proprietors of the property of St. Sulpice in Canada.

One consideration which it is important to bear in mind, is, that if it be argued that the Sulpicians of Montreal lost their quality of a Community and their property, by becoming subjects of the King, it must be allowed that having become Aliens as to France, they have also lost their right to be members of the Corporation of the Sulpicians in France, and to the property of the Order there. On the contrary, if they had left Canada, they would have preserved all their rights in France ; and as the treaty of Peace authorized them to sell, they would also have preserved the value of their property in Canada. Such is the condition which it is attempted to attach to the quality of a British

subject. By refusing it, every thing would have been gained, estate and property, in France and in Canada; by accepting it, every thing is to be lost, estate and property, in France and in Canada; such are the sad consequences of the attack made upon the Community and property of the Seminary of Montreal.

Acts of
the Govern-
ment.

Seventhly: We prove the right of the Seminary by means of divers Acts of the Government. The Government (as we said before) paid the Rent of the house in which the *Greffe* was held, during thirty years. It caused the Minutes of the *Greffe* to be returned to the Seminary. It caused the *Greffier* to be named by the Seminary; all these Acts are connected with the right of the Seminary to the property aforesaid, and to the *Greffe* which it received in exchange for the Seigniorial jurisdiction, by the Edict of 1693.

Fealty and
Homage.

Eighthly: We prove the same thing by the Fealty and Homage rendered by the Seminary to the King in 1781.

In order to learn the effect of this ceremony, let us consult certain Law Authors.—Pothier (V. page 70, edition in 4to.) says that by this ceremony, “the Fief that was “vacant ceases to be so, the Vassal being invested by the “Seignior.” At page 71, he says that the Vassal would have the right of complaint, if he was afterwards troubled by the Seignior, or in any other way, in the possession of his Fief. Blackstone (Vol. 3. chap. 15, French edition) says, in speaking of the Law with regard to Aliens, that to be entitled to exercise the right of forfeiture it is necessary that the Seignior should not previously have done any derogatory Act, such as that of receiving Fealty and Homage,

for in that case it would be presumed that he had recognized the right of the Alien who rendered it. Ferrière (Grand Coutu. Vol. 1, page 127, No. 3,) says "The performance of Fealty and Homage gives no title to the Fief, but is an act of use, execution and possession, which forms a presumption against either the Vassal or the Seigneur. Héricourt; (H. 11. Art. 61.) The Seigneur after having received persons holding in mortmain to perform Fealty and Homage, cannot afterwards oblige them to dispossess themselves of the property." Le Dictionnaire de Justice. (in three Volumes, *verbo*, Foi et Homage) says that this ceremony is a token of the protection which the Seigneur owes to his Vassal. Blackstone (Vol. 2, page 302,) says that the obligation is reciprocal, and that if the Vassal was obliged to serve, he had a right to full protection in return.

According to Pothier then, the King could not disturb the Seminary in the possession of its Seigniories, and according to Héricourt, he could not oblige it to dispossess itself of them. According to Ferrière, then, the performance of Fealty and Homage affords a proof for the Seminary, and against the King.—According to Blackstone then, the King could not enforce any claim against the right of the Seminary as an Alien, but would be under the necessity of acknowledging it to be the legitimate proprietor, even if the property had been originally usurped by it. According to Pothier then, the vacant Fief has been filled by the act of the King, who has invested the Seminary with it. According to Blackstone then, and the *Dictionnaire de Justice*, the King is even bound to protect the Se-

minary in the possession of its Seigniories.—(We bring forward our claims upon His Majesty with confidence, because it is from Him that we derive them.)

But it will perhaps be said that this performance of Fealty and Homage gives no title. We answer—the King has received this Fealty and Homage, and has recognized the right of property in the Seminary ;—He must, therefore, have found that it had both the power of holding the property and a legal title to it, which is all that is necessary for holding it. And if the King is satisfied, who shall contest this right ?—When the King, who alone is interested, recognizes and certifies the right of the Seminary, who shall complain ?—When the King, does not hold his authority to be violated, who shall assert that it is attacked ?—If any thing more were necessary we might say, that the King to whom the ancient Titles, Donations, Letters Patent &c. were presented, found that they were applicable to the Seminary of Montreal (as we have proved them to be) —He found that the Seminary as co-proprietor, possessed by virtue of ancient Letters Patent : He found that being co-proprietor, it was not necessary that new Letters Patent were in any wise necessary :—and this was so clear that the King exacted none of those dues which are payable on mutation, and the Instrument mentions no such dues.

By the act of receiving Fealty and Homage, the King has not only admitted that the ancient Titles ought to avail to the Seminary : but this act forms of itself the strongest title according to the authors above cited, so strong indeed that the right of the Seminary cannot be afterwards disputed by the King himself, nor can the Seminary be

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compelled by the King to dispossess itself of the property ; it must be recognized as the proprietor, even if its possession had not before been lawful, it is put in possession and invested with it by the King himself : to put into possession is to do more than give, and yet if the King had given the property, it is certain that no Letters Patent would have been required. So strong is the Title thus given, that the King is not only bound to allow the Seminary to enjoy the property, but also to protect it in that enjoyment.

Ninthly : We prove the right of the Seminary by the Cession. Cession of 1764, although this proof be in no wise necessary, after all those which we have already given.

It is a principle of the Feudal Law, that Lods et Ventres &c. are not due when persons holding property in common sell to each other, because there is no mutation. The cession then, having been made by the Sulpicians to those who held the property in common with them, there was no mutation of Proprietors, and consequently no Letters Patent were in any wise necessary.

Such are the principles applicable to Lands held in mortmain, as may be seen by an Arrêt in 1724. (Vol. 3. des Amortissemens, p. 498). The cause related to an exchange made between the Chapter and a Chaplain of St. Germain. The Chapter and the Chaplain maintained that they formed part of the same corporation, and that therefore as there was no change of proprietors, there was no real exchange : The Lessee of the Seigniorial Dues maintained that the matter related to property held individually, and not in common, and that therefore there was a change of proprietors, and consequently a real exchange.—The principle

therefore was admitted on both sides that where the property was common to both parties, there could be no real exchange, because there was no change of proprietor.—The property of the Sulpicians in Canada, being therefore common to all the Sulpicians, the cession of it effected no change of proprietor.—Consequently no dues of mortmain could take place neither could Letters Patent authorizing the holding of the property in mortmain become necessary.

But what is this cession?—It is in fact a partition of property between the Sulpicians in France and those in Canada.—Before the conquest, both of them possessed in common the property of the Order in the two countries. The conquest made the two portions of the members of that Order, foreigners with regard to each of the Governments respectively, and therefore necessarily separated them.—The property therefore was necessarily divided also. This was the effect of the cession. By it the Sulpicians of France abandoned all their property in Canada in favor of those at Montreal, and thus renounced the right of selling it which the Treaty of Peace had given them. The Sulpicians of Canada in their turn and by an Instrument bearing the same date, ceded certain Rents secured on the *Hôtel de Ville* at Paris, of which they might have retained possession.—They did not cede their right to the other property of the Sulpicians in France, because by becoming British subjects they had lost all right to them. In this manner a complete partition took place. The property in France remained with the Sulpicians in France, and that in Canada with the Sulpicians in Canada. But this parti-

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tion which the conquest had rendered necessary and legal, is strictly according to the rules of Jurisprudence developed by the judicious author of the *Dictionnaire du Domaine*. In treating of a partition made between an Abbot and the Monks—he says, “up to the time of the partition, each “had part of an undivided right to the whole property; so that the whole belonged to him generally, although “no part belonged to him in particular.” (Vol. 2, p. 417, 1st column.) The partition being made, it does not of itself give occasion to any Seigniorial dues, which are occasioned by mutations only.—Before the partition each portion of the Sulpicians had part of an undivided right to the whole. After it, as there was no mutation, there was no change of Proprietor, nor any necessity for Letters Patent.

So also (5, 2nd Col.) “No mortmain dues would accrue on any partition between the Abbott and the “Monks, if it were pure and simple.” Therefore in the case under consideration, the partition being pure and simple, no mortmain dues accrued: and therefore no Letters Patent authorizing the holding of the property in mortmain were necessary.

Partition
made.

The author gives a reason for this which admits of no reply—“The property held in common by the Abbey or “Convent, belongs to the Abbot and the Monks, who by “the original authorization to hold in mortmain are become “reciprocally capacitated to hold each his portion. They “may therefore put an end to the community of their rights “by a partition by which each shall be enabled to enjoy “his share separately, and in this case no mortmain dues “would accrue.” (426, 2nd col.) If the authorization to

hold in mortmain be required,—it has already been given, the original authorization has rendered all the Sulpicians capable of possessing each his portion whenever a partition is effected. The Titles then of the Seminary, as founded on the cession or partition, are the ancient Letters of mortmain, those of 1617, and of 1714.

This, says M. Dupin in his *opinion*, is a partition rendered necessary by circumstances; and which does not create any new right, but declares and determines rights to property which was before undivided; and the sole effect of the cession has been, to determine what part of the property heretofore held in common, is to belong hereafter to the Seminary of Montreal.

That which completes the demonstration of the validity of the cession, is, that the King approved it by receiving Fealty and Homage; and so clearly approved it that he has recognized and recorded the right of the Seminary in the act of receiving Fealty and Homage. By not receiving any mutation fine, the King acknowledged that none was due, and therefore that there was no change of Proprietor, and this was acknowledging that no Letters Patent were necessary. The King thus removed the difficulty from the very beginning, by showing that no Letters Patent were necessary in consequence of the said cession. He approved the cession, and as he alone was interested in proving it invalid for the purpose of acquiring the property which would have been forfeited, he alone is entitled to complain, if his authorization was necessary, and through neglect had not been demanded.

Let us recall the circumstances under which the cession

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was made, in order to understand the consideration which belongs to it, and the august authorities by which it is supported. By the Treaty of Peace, the Sulpicians were allowed eighteen months to dispose of their property in Canada. But by the Donation of 1663, and the Letters Patent of 1617, the said property was to be vested in the corporation of the Sulpicians for ever. The sole manner in which this right of selling (or of ceding) could be reconciled with the conditions of the Donation and of the Letters Patent, was by a cession from the Sulpicians of France to those of Canada. By this means the Sulpicians of France enjoyed the right given them by the Treaty, while at the same time the conditions of the Donation and Letters Patent were complied with, and in the only possible manner. The cession being made to the Sulpicians of Canada, the corporation of St. Sulpice continued to enjoy the property through its members, who themselves became a corporation. The cession then was the execution of the Treaty of Peace and of the Letters Patent. How can it be possible, that by petty subtleties an act performed under authority so imposing should be set aside?

The following is another of these circumstances. In March 1764, the Superior of the Sulpicians received the following Letter from Mr. de Guerchi, the French Ambassador at London:—" Lord Halifax has told me that His Britannic Majesty consents that the Priests of the Seminary of Montreal, shall continue to enjoy the Real Property belonging to the Seminary of St. Sulpice, and situated in Canada, but without depending in any way upon the Seminary at Paris." This Letter was the result of a

meeting of the Council, called by the King, with reference to Canadian affairs. (The proof of the fact here asserted will be found in the Archives of Government at London, where it will be easy to verify it.) A short time after this, on the 29th of April 1764, the cession took place, and demonstrated that the dependence of the Seminary of Montreal had ceased to exist, according to the wish of the Government. The promise thus made by the King, and the cession, form together an agreement by which the Sulpicians renounce their right of selling, and the King binds himself to allow the Seminary of Montreal to enjoy the property. And now that the Sulpicians have fulfilled their engagements, can it be wished that the King should not perform his?—We entertain other ideas with regard to His Majesty's gracious promises.

It may perhaps be asked whether the Seminary of Montreal was so far a portion of the corporation of the Sulpicians, as to be regarded as co-proprietor of the property of that body.

There can be no doubt that it was. The Letters Patent of 1677 permit the corporation of the Sulpicians to establish a Seminary at Montreal. (Loix du pays, 80.) Now it is evident that it could establish nothing but a community of its own body. The Letters Patent set forth that in consequence of the good which the Ecclesiastics of the Seminary at Paris had done at Montreal, that the King is willing that they should erect a community and Seminary at the latter place, and it is clear that the intention was that those who had commenced the good work should continue it for ever, in an establishment permanently attached to the place.

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It was therefore the Ecclesiastics of the same Seminary who were to compose the new Community at Montreal.— In confirmation of this, it appears by the *Lettres de Terrier* of 1695 and 1724, and by the Letters Patent for the union of the Curacies (304, &c.) that the Ecclesiastics of the Seminary of St. Sulpice had erected a Seminary at Montreal by the King's permission. There can be no doubt that they did not establish a community and Seminary of any other corporation. And whenever any favor was to be asked of the King, the Petition, (always in the name of the parties interested) was made by the Ecclesiastics of the Seminary at Paris, (p. 6.) that is, by the Superiors of the Order who petitioned on behalf of an Establishment belonging to their Order.

We have also an infinite number of ancient and authentic Instruments in which the Priests of the Seminary of Montreal take the quality of Ecclesiastics of the Seminary of St. Sulpice at Paris. And this fact is so well ascertained, that the Crown Officers admitted it in 1789, and proved it by divers other Instruments in their hands. It was from the Seminary at Paris that all the Priests of the Order were sent to the several communities of the Sulpicians; they were therefore members of that Seminary. The reason was, that the Order was erected into a corporation under the name of the Seminary of St. Sulpice at Paris, which was necessary, that Seminary being then the only one which it possessed. When it had increased, it sent out Priests to found new Establishments in Canada, &c. These Priests, therefore, were and continued to be Priests of St. Sulpice at Paris. From this circumstance all the

members of the Order have constantly been called *Priests or Ecclesiastics of the Seminary of St. Sulpice at Paris*, or more shortly, *Priests or Ecclesiastics of St. Sulpice*; and the name which has been constantly given to the Seminary at Montreal is "*The Seminary of St. Sulpice established at Montreal*," in the Instruments above cited and passed in 1693, 1702, 1716, 1722, &c. (Letters Patent and Arrêts of the Kings of France). And it is also attested by an authentic Instrument passed by the Superiors of the Sulpicians, that all the Sulpician Priests were *of the Seminary of St. Sulpice at Paris*, and were all co-proprietors of the property of the Ecclesiastics of the Seminary at St. Sulpice at Paris.

It is then demonstrated that the Ecclesiastics of the Seminary of Montreal, were Ecclesiastics of the Seminary of St. Sulpice at Paris, both by the Letters Patent of 1677, and by the *Lettres de Terrier*; and by a crowd of other Instruments in which they take that quality, and by the admission (and the reason assigned for it) made by the Crown Officers in 1789, in their papers against the Seminary; and by the place (the Seminary of St. Sulpice at Paris) in which the Sulpician Priests were ordained, and whence they were sent to the several establishments of the Order; and by the name under which the Order was established; and by the evidence of the Superiors of the Order themselves, upon a matter which was within their competency only and perfectly foreign to all who did not belong to their body. The Seminary of Montreal then was, by virtue of its said quality, co-proprietor of the property of the Sulpicians in Canada, without any prejudice to the individual rights which we have demonstrated to belong to it.

From ignorance of these facts arises the error of many persons, who not being aware of the nature of the Order in question, have not perceived the right which the Seminary of Montreal possessed, as co-proprietor at least, even before the Conquest, nor the extension of that right at the conquest by the exclusion of the Sulpicians of France: And who confounding the cession of 1764, with a Donation from one establishment of an Order to another (which is always liable to difficulty,) have not perceived that this was a cession made to co-proprietors, or rather a partition of property among those who had before held it in common. But the Government taking a clearer and more elevated view of the subject, saw all this, and recognized the Seminary as Proprietor, notwithstanding the interest of the Government to the contrary, and notwithstanding the opinion of its Officers for the time being.

If it be now asked, what is the title of the Seminary, we answer: Its title is, the Donation itself, made to the Sulpicians, in consideration of work to be done on the spot (even according to the admission of the Crown Officers in 1789) and which ought therefore to avail to those Sulpicians who perform that work on the spot.—Its title is, this Donation, made to the Sulpicians for ever, and which cannot after the conquest have any effect, except in favor of the Sulpicians of Montreal.—Its title is, the Letters Patent of 1677, which confirm the Donation according to its tenor, and therefore (as will appear from what we have said) in favor of the Sulpicians of Montreal.—Its title is, the said Letters Patent, which declare the said property to belong inalienably to the Sulpicians

Fifteen titles in favor of the Seminary of Montreal.

for ever, and therefore at the conquest to have fallen to the Sulpicians of Montreal alone.—Its title is, the same Letters Patent which declare the said property irrevocably *dedicated to God*; they belong therefore no longer to men: “they cannot belong to the King,” said Governor Haldimand, who received the Fealty and Homage of the Seminary.—Its title is, the Letters Patent or rather the Edict of 1714, which confirmed the Letters Patent of 1677, in favor of the Sulpicians and with new privileges.—Its title is, that this property forms the special endowment of the Seminary of Montreal, recognized by the corporation of the Sulpicians, and by divers acts of the Kings of France, the Edict of 1693, Arrêts of 1716 and 1722, &c.—Its title is, its quality of co-proprietor with the Sulpicians of France, who becoming Aliens by the conquest, left the Seminary of Montreal sole proprietor.—Its title is, the custom of Conquest, which is that the property of any Order should without any legal proceeding remain to the Establishments of that Order on the spot.—Its title is, that as the property belonged to the Order of the Sulpicians, and there were in Canada no others of that Order except those of the Seminary of Montreal (as has been proved,) it follows that all the property of the Order belongs to the Seminary of Montreal.—Its title is, a cession which having been made of property held in common, operates no mutation according to the feudal law; and when there is no change of proprietors, there is no necessity for Letters Patent.—Its title is, a cession, which not only according to the feudal law, but also according to the law regulating mortmain, produces no mortmain dues, and consequently renders Letters Patent

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not necessary for holding the property in mortmain.—Its title is, a cession which is an actual partition between the corporation of the Sulpicians, and the corporation of the Seminary of St. Sulpice at Montreal, a partition of property held in common, or of which each party was capable of holding its own portion by virtue of the primitive power given them to hold it in mortmain (as we have proved): a cession which is therefore authorized by the Letters Patent of 1677, which originally authorized the holding of the property in mortmain.—Its title is, the said cession which was adjudged to be good by the King himself (through his Representative) and under which the Seminary was by the reception of Fealty and Homage, recognized as proprietor either because the King deemed that Letters Patent were not necessary in transactions between co-proprietors; or that the ancient Letters Patent were applicable to such transactions; or that to place the Seminary in possession (and thereby to do more than give them the property) was equivalent to a Royal Grant, with regard to which Letters Patent are not necessary.—Its title is, the cession aforesaid which establishes the absence of all dependence of the Seminary of Montreal on the corporation of the Sulpicians in France; and the consequent validity of the promise of the King to the French Ambassador, that the Seminary of Montreal should enjoy the property of the Sulpicians, on condition that it should be independent of the Seminary of Paris.—And if any doubt could yet remain, its title is founded on possession, which according to the principles of law would remove all doubt; for its title is in fine, a possession of nearly 170 years, 90

in its quality of co-proprietor, and 80 in its quality of proprietor.

Let us close this paper by an argument which must strike any judicious man. The Seminary of Montreal claims to be proprietor of the property it possesses ; some persons pretend that this property belongs to the King. In this contestation an Arbitrator is chosen, and that Arbitrator is the King himself. Certainly those who support His Majesty's claims will not recuse him ; the Seminary with full confidence in his justice consents to this, that is to say, consents that its august opponent shall be the Judge. The Judgment has been pronounced :—it was rendered by the King's Representative, and for a period of nearly 60 years it has never been reversed by His Majesty.—By a solemn act, (that of receiving Fealty and Homage) the Governor, in the King's name, recognized, declared and certified under his hand, that the property was vested in the Seminary of Montreal. Who shall call in question so noble a decision ?

N. B.—When in the citations made in this paper, the page only of the *Loix du Canada* is mentionned, the official work, intituled, "*Edits, Ordonnances Royaux et Arrêts du Conseil d'Etat du Roi concernant le Canada,*" is intended to be pointed out.

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